

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

5 GILBERT FIGUEROA,

6 Plaintiff,

Case No. 2:22-cv-00477-ART-DJA

7 v. GILL, et al.,

8 Defendants.

ORDER PARTIALLY SUSTAINING
PLAINTIFF'S OBJECTION
(ECF NO. 42) TO REPORT AND
RECOMMENDATION
(ECF NO. 41)

10 *Pro se* Plaintiff Gilbert Figueroa brings this §1983 action against officers of
 11 the Las Vegas Metropolitan Police Department, alleging they needlessly shot him,
 12 causing him to suffer nerve damage and to lose a testicle, in violation of his
 13 Fourth Amendment rights. Before the Court is Mr. Figueroa's Objection (ECF No.
 14 42) to Magistrate Judge Daniel J. Albregts' Report and Recommendation (ECF
 15 No. 41) (R&R) recommending the Court deny Mr. Figueroa's Motion for Leave to
 16 File an Amended Complaint (ECF No. 35). The Court grants Mr. Figueroa leave to
 17 amend his complaint to add a conspiracy claim but denies leave to add other
 18 proposed claims.

19 **I. BACKGROUND**

20 In April of 2020, members of the LVMPD shot Mr. Figueroa while arresting
 21 him in Las Vegas. (ECF No. 12 at 4.) As a result, Mr. Figueroa suffered nerve
 22 damage, leg pain, and PTSD, and doctors surgically removed one of his testicles.

23 In his First Amended Complaint ("FAC"), which is the operative complaint
 24 at the time of this order, Mr. Figueroa brought a claim for Fourth Amendment
 25 excessive force against the officers who arrested him and a municipal liability
 26 claim for failure to train and deliberate indifference against the LVMPD. (*Id.* at 4-
 27 7.) Mr. Figueroa's FAC was screened in September 2022. (ECF No. 13.) His

1 municipal liability claim was dismissed without prejudice, and his Fourth
 2 Amendment claim was allowed to proceed. (*Id.* at 6.)

3 On April 17, 2023, Mr. Figueroa sought leave to amend his FAC by (1)
 4 adding the Las Vegas Metropolitan Police Department to his existing Fourth
 5 Amendment claim; (2) reasserting his municipal liability claim against LVMPD;
 6 and (3) adding a new claim for conspiracy against two named officer defendants
 7 and a Doe officer. (ECF No. 41 at 1; *compare* ECF No. 12 with ECF No. 35-1.) The
 8 deadline for amending pleadings was January 3, 2023. (ECF No. 23 at 1.)

9 Judge Albregts then issued an R&R recommending the Court deny Mr.
 10 Figueroa's motion without prejudice because Mr. Figueroa had failed to
 11 demonstrate good cause for amending his FAC. (ECF No. 41 at 3.) According to
 12 Judge Albregts, Mr. Figueroa's first two proposed amendments aimed to add
 13 LVMPD to his Fourth Amendment claim and reasserted his municipal liability
 14 claim against LVMPD. Judge Albrechts denied leave to amend because the
 15 underlying facts of those claims were available to Mr. Figueroa "since the
 16 beginning of this case." (*Id.* at 2.) Mr. Figueroa's third proposed amendment
 17 added a conspiracy claim that was based on newly-discovered bodycam footage
 18 that was not previously available to Mr. Figueroa. (*Id.*) Judge Albregts denied
 19 leave to add the conspiracy claim because Mr. Figueroa had failed to explain when
 20 he received the footage or why he waited until after the deadline to amend his
 21 FAC. (*Id.* at 3.)

22 In his Objection to Judge Albregts' R&R, (ECF No. 42), Mr. Figueroa
 23 provided a timeline detailing his diligence in seeking the relevant bodycam footage
 24 and explaining why it took him until April to file his Motion for Leave to Amend.
 25 Mr. Figueroa did not explain why he failed to add his claims against LVMPD
 26 sooner.

27 Defendants have since objected that Mr. Figueroa should not be given leave
 28 to amend his FAC because he has failed to demonstrate good cause, inclusion of

1 the new claims would be futile, and amendment would cause Defendants undue
2 prejudice by prolonging the litigation and forcing parties to reopen portions of the
3 discovery process. (ECF No. 43.)

4 **II. DISCUSSION**

5 This Court “may accept, reject, or modify, in whole or in part, the findings
6 or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where
7 a party timely objects to a magistrate judge’s report and recommendation, the
8 Court is required to “make a de novo determination of those portions of the [report
9 and recommendation] to which objection is made.” *Id.* Because Mr. Figueroa
10 objected to Judge Albregts’ R&R, (ECF No. 42), the Court’s review is *de novo*.

11 When, as in this case, the deadline for amending pleadings under a
12 scheduling order has passed, the Court’s must analyze motions to amend
13 complaints under Rule 16(b). *See Coleman v. Quaker Oats Co.*, 232 F.3d 1271,
14 1294 (9th Cir. 2000) (court correctly applied Rule 16(b) because time to amend
15 pleadings lapsed before party moved to amend); *Johnson v. Mammoth Recreations,*
16 *Inc.*, 975 F.2d 604, 608 (9th Cir. 1992) (applying Rule 16(b) once deadline to
17 amend pleadings has passed). Under Rule 16(b)(4), a “schedule may be modified
18 only for good cause and with the judge’s consent.” “Rule 16(b)’s good cause
19 standard primarily considers the diligence of the party seeking the amendment.”
20 *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 737 (9th Cir.
21 2013), *aff’d sub nom. Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373 (2015) (internal
22 quotation marks and citations omitted).

23 Despite his earlier failure to show good cause, Mr. Figueroa’s Objection
24 provides a detailed explanation of his diligence and inability to bring his
25 conspiracy claim sooner. As a prisoner, Mr. Figueroa’s access to legal documents
26 is limited. Mr. Figueroa received the relevant bodycam footage on January 6,
27 2023. (ECF No. 42 at 2.) On January 18, he was informed he needed to schedule
28 an appointment to view that footage. (*Id.*) He promptly sent a request to view the

1 footage on January 25 but was not allowed to access it until February 27—and
 2 then only for one hour per week. (*Id.*) On March 5, Mr. Figueroa sent a discovery
 3 request to Defendants in order to learn the names of the officers he hoped to sue.
 4 (*Id.*) On April 3, he received a list containing those names. (*Id.*) On April 16, he
 5 filed a motion to amend his FAC. (*Id.*)

6 Mr. Figueroa has not demonstrated the same diligence in bringing his
 7 proposed claims against the LVMPD. The Court agrees with Judge Albregts that
 8 Mr. Figueroa could have brought these claims at the beginning of this litigation.
 9 Indeed, he has tried to bring his municipal liability claim before, and he has not
 10 alleged any new facts since the Court dismissed that claim. (*Compare* ECF No. 12
 11 *with* ECF No. 35-1.) Given the available facts, Mr. Figueroa has not met Rule
 12 16(b)'s good cause standard for his claims against the LVMPD.

13 Defendants object that allowing Mr. Figueroa to amend his FAC would be
 14 futile and result in prejudicial delays. (ECF No. 43 at 7.) After a party has shown
 15 good cause under Rule 16(b), it must demonstrate that amendment is proper
 16 under Rule 15. *Johnson*, 975 F.2d at 608 (citation omitted). “The court considers
 17 five factors [under Rule 15] in assessing the propriety of leave to amend—bad
 18 faith, undue delay, prejudice to the opposing party, futility of amendment, and
 19 whether the plaintiff has previously amended the complaint.” *United States v.*
 20 *Corinthian Colls.*, 655 F.3d 984, 995 (9th Cir. 2011). Courts “should freely give
 21 leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). Defendants concede that
 22 a conspiracy claim against the officers is not precluded as a matter of law. (ECF
 23 No. 43 at 6.). Any resulting delay from amendment would not so prejudice
 24 Defendants as to outweigh Rule 15’s other factors. Mr. Figueroa, who has
 25 amended his complaint only once, has shown that he was diligent, and there was
 26 no bad faith or undue delay on his part. Here, amendment is in the interest of
 27 justice.

28 **III. CONCLUSION**

It is ordered that Judge Albregts' R&R (ECF No. 41) is rejected in part and adopted in part.

It is further ordered that Mr. Figueroa's Motion for Leave to Amend (ECF No. 35) is granted in part and denied in part. Mr. Figueroa may amend his complaint to add his proposed conspiracy claim but may not add any of his other proposed claims or defendants.

Dated this 3rd day of November 2023.

From Russell Brown

ANNE R. TRAUM
UNITED STATES DISTRICT JUDGE